

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MICHAEL H. SUSSMAN, BENNETT
WEISS, MAURY KNIGHT and
DEMOCRATIC ALLIANCE OF
ORANGE COUNTY,

Plaintiffs,

-VS-

BRIAN A. CRAWFORD, GARRISON
COMMANDER and UNITED STATES
MILITARY ACADEMY AT WEST POINT,

Defendants.

-----X

**AFFIRMATION IN SUPPORT OF PLAINTIFFS' APPLICATION FOR
A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

STATE OF NEW YORK)
)
COUNTY OF ORANGE)

STEPHEN BERGSTEIN, having been duly sworn, deposes and states:

1. My office represents plaintiffs in this action. I am respectfully submitting this affirmation in support of plaintiffs' application for a temporary restraining order and preliminary injunction.
2. Plaintiffs wish to hold a protest march at West Point on May 26, 2007 commencing at 9:00 a.m. and lasting approximately one hour. This date was selected because that is West Point's annual graduation ceremony, and Vice President Cheney is scheduled to give the commencement address.
3. Pursuant to West Point's speech and protest policy, on April 16, 2007, plaintiff Michael H. Sussman sent a letter to the Staff Judge Advocate and Provost Marshall

that request. This application seeks an order allowing plaintiffs to proceed with the march. Annexed hereto as Exhibit 1 is a fax transmission sheet from Sussman's law firm for the month of April 2007. Fax No. 223 for April 16, 2007 (938-7531) is for the Provost Marshall. Fax No. 224 for that date (938-2390) is for the Staff Judge Advocate.

4. I have faxed copies of all papers in connection with this application to the following offices:

United States Attorney's Office
86 Chambers Street
New York, N.Y. 10007
Fax: (212) 637-2750

Staff Judge Advocate and Provost Marshall
United States Military Academy
West Point, N.Y. 10996
Fax: (845) 938-2390 (Staff Judge Advocate)
(845) 938-7531 (Provost Marshall)

Annexed hereto as Exhibit 2 are the cover letters and fax receipts to these individuals.

5. After my office notified defendants that plaintiffs would seek a court order allowing them to demonstrate on May 26, 2007, defendants faxed to my office defendant Crawford's formal and belated reply to plaintiff Sussman's request. In his letter to Sussman dated May 14, 2007, defendant Crawford wrote that West Point has never permitted protests or demonstrations of any type within the gates of the installation and that "[p]ermitting protests or demonstrations inside the gates of the installation is inconsistent with the military mission and can detract from the good order,

the installation.”

6. Defendant Crawford’s May 14, 2007 letter further states that “I have determined that there is no safe way for up to 1000 people to assemble in any area on the military reservation on May 26, 2007 to protest the appearance of the Vice President of the United States at the graduation ceremony that morning without compromising the safety or our residents, our graduation visitors, and the protesters themselves.” A copy of that letter is annexed hereto as Exhibit 3.
5. As plaintiffs wish to hold their event on May 26, 2007, time is of the essence. It is my experience that Orders to Show Cause require the plaintiffs to serve the defendants personally within a limited time frame. For the following reasons, I am respectfully requesting that plaintiffs satisfy this requirement by serving the United States Attorneys’ Office by fax and overnight mail. First, in my experience, for security reasons, it is quite difficult to move about the West Point property. This travel restriction would make it difficult to timely serve the interested parties. As the United States Attorney’s Office routinely represents West Point in litigation, we can satisfy the notice requirements by faxing and overnighting the Order to Show Cause, which has already been faxed to that office in anticipation of today’s court appearance.
6. In addition, as the Democratic Alliance of Orange County is a non-incorporated entity, plaintiffs are respectfully requesting that this Court waive any bond in connection with this application.

Finally, I am requesting that this Court treat this case as related to Dolman v. Horner, 04 Civ. 3680 (SCR), a First Amendment case against West Point. In that action, the plaintiffs allege that they were expelled from West Point in retaliation for protesting U.S. military policy at a basketball game. In the course of that litigation, West Point devised a written speech and protest policy which has become a relevant exhibit in that case. As Judge Robinson recently heard oral argument in Dolman, I believe His Honor is familiar with these issues.

Dated: May 14, 2007


STEPHEN BERGSTEIN

LAW OFFICES OF MICHAEL H. SUSSMAN

MICHAEL H. SUSSMAN
ATTORNEY AT LAWPlease Send All Correspondence to:
40 PARK PLACE, P.O. BOX 1005
GOSHEN, NEW YORK 10924LEGAL ASSISTANTS
EVELYN BELL
LIZ BUCAR
BETH SHEWELL

(845) 294-3991

Fax: (845) 294-1623

FAX COVER SHEET

This message is intended only for the use of the below named recipients. It may concern information that is privileged, confidential and exempt from disclosure. If you have received this message by mistake or error, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you are not the intended recipient, please notify us immediately by telephone and return the original message to us by mail.
Thank you.

DATE: 5/14/07

NUMBER OF PAGES: _____ (Including cover sheet)

TRANSMITTED TO:

Name: Steve Fax #: 4169-5904
 Name: _____ Fax #: _____
 Name: _____ Fax #: _____
 Name: _____ Fax #: _____

A copy of this document

_____ WILL _____ WILL NOT be sent via mail.

NOTES:

See NO. 223 & 224 on the fax report.
The fax number for the State
Judge Advocate is 938-2390.
The fax number for the Provost
Marshal is 938-7531. The receipt/
Report is attached, as is a page from
the West Point web site.

Evelyn

Fax Sent Report

Date/Time : APR-19-2007 11:04AM THU
Fax Number :
Fax Name :
Model Name : 1815dn

No.	Name/Number	StartTime	Time	Mode	Page	Result
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202	19147391787	04-10 03:30PM	00'28	ECM	003/003	O.K
203	12122608627	04-11 02:40PM	00'18	ECM	002/002	O.K
204	12124166075	04-12 07:35AM	00'21	ECM	002/002	O.K
205	12125005031	04-12 07:37AM	00'20	ECM	003/003	O.K
206	12024166899	04-12 11:55AM	00'36	ECM	004/004	O.K
207	4634765	04-12 11:56AM	00'27	ECM	004/004	O.K
208	2913014	04-12 02:49PM	00'21	ECM	003/003	O.K
209	12024166899	04-13 08:26AM	00'19	ECM	002/002	O.K
210	15162969155	04-13 11:37AM	00'17	ECM	002/002	O.K
211	19143904179	04-13 12:28PM	00'19	ECM	002/002	O.K
212	19149466868	04-13 12:30PM	00'20	ECM	002/002	O.K
213	19143904095	04-16 08:11AM	00'34	ECM	003/003	O.K
214	12014885556	04-16 08:13AM	00'38	ECM	003/003	O.K
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217	3528131	04-16 08:53AM	00'33	ECM	002/002	O.K
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222	15184851725	04-16 01:38PM	00'23	ECM	001/001	O.K
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246	2924473	04-19 09:26AM	00'00	ECM	001/003	No Answer
247	2924473	04-19 09:41AM	00'00	ECM	001/003	Comm. Error
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250	2924473	04-19 11:03AM	00'00	ECM	001/003	Comm. Error

Total Time 00:35:53

EXHIBIT 2

- ATTORNEYS AT LAW -
15 RAILROAD AVENUE • CHESTER, NEW YORK 10918
TELEPHONE (845) 469-1277
FACSIMILE (845) 469-5904
E-MAIL: the firm@tbulaw.com
www.tbulaw.com

Stephen Bergstein
Helen G. Ullrich

Of Counsel
Christopher D. Watkins

VIA FACSIMILE

May 14, 2007

James Cott, Esq.
Chief, Civil Division
Southern District of New York
86 Chambers Street
New York, N.Y. 10007
(212) 637-2750

Staff Judge Advocate
United States Military Academy
West Point, N.Y. 10996
(845) 938-2390

Provost Marshall
United States Military Academy
West Point, N.Y. 10996
(845) 938-7531

Re: **ORDER TO SHOW CAUSE**
Sussman v. Crawford et al

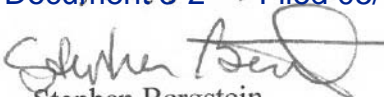
Dear Sir or Madam:

I am faxing you materials that we intend to file tomorrow morning at the U.S. Courthouse in White Plains, N.Y., in connection with the above-styled Order to Show Cause and Request for a Temporary Restraining Order and Preliminary Injunction.

This case alleges that, in violation of the First Amendment, West Point has failed to honor a request for a protest march to coincide with the graduation exercises scheduled for May 26, 2007. The OSC requests an order allowing plaintiffs to proceed with the event as set forth in the Sussman letter to West Point, dated April 16, 2007. That letter is annexed to the Sussman affirmation in support of this application, at Exhibit 1.

Please call my office if you have any questions.

Document 3-2, Filed 05/


Stephen Bergstein

enclosures

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 2623
 CONNECTION TEL 9382390
 SUBADDRESS
 CONNECTION ID
 ST. TIME 05/14 12:22
 USAGE T 04'12
 PGS. SENT 27
 RESULT OK

BERGSTEIN & ULLRICH, LLP

- ATTORNEYS AT LAW -

15 RAILROAD AVENUE • CHESTER, NEW YORK 10918

TELEPHONE (845) 469-1277

FACSIMILE (845) 469-5904

E-MAIL thefirm@tbulaw.com

www.tbulaw.com

Stephen Bergstein
 Helen G. Ullrich

Of Counsel
 Christopher E. Watkins

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THANK YOU

Date: 5/14/07

Pages Transmitted (including this cover): _____

TRANSMITTED TO:

Name: James Cott Fax No: 212-637-2750

Name: Provost Marshall Fax No: 845-938-7531

Name: Staff Judge Advocate Fax No: 845-938-2390

Name: _____ Fax No: _____

Name: _____ Fax No: _____

Transmitted By Catherine Rose et al

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 2622
CONNECTION TEL 9387531
SUBADDRESS
CONNECTION ID
ST. TIME 05/14 12:15
USAGE T 04'13
PGS. SENT 28
RESULT OK

BERGSTEIN & ULLRICH, LLP

- ATTORNEYS AT LAW -

15 RAILROAD AVENUE • CHESTER, NEW YORK 10918

TELEPHONE (845) 469-1277

FACSIMILE (845) 469-5904

E-MAIL thefirm@tbulaw.com

www.tbulaw.com

Stephen Bergstein
Heien G. Ullrich

Counsel
Christopher D. Watkins

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Name: James Cott Fax No: 212-637-2750

Name: Provost Marshall Fax No: 845-938-7531

Name: Staff Judge Advocate Fax No: 845-938-2390

Name: _____ Fax No: _____

Name: _____ Fax No: _____

----- to show here also

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 2620
CONNECTION TEL 12126372750
SUBADDRESS
CONNECTION ID
ST. TIME 05/14 12:04
USAGE T 04'38
PGS. SENT 29
RESULT OK

BERGSTEIN & ULLRICH, LLP

- ATTORNEYS AT LAW -

15 RAILROAD AVENUE • CHESTER, NEW YORK 10918

TELEPHONE (845) 469-1277

FACSIMILE (845) 469-5904

E-MAIL: thefirm@tbulaw.com

www.tbulaw.com

Stephen Bergstein
Helen G. Ullrich

Counsel
Christopher D. Watkins

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THANK YOU

Date: 5/14/07

Pages Transmitted (including this cover): _____

TRANSMITTED TO:

Name: James Cott Fax No: 212-637-2750

Name: Provost Marshall Fax No: 845-938-7551

Name: Staff Judge Advocate Fax No: 845-938-2300

Name: _____ Fax No: _____

Name: _____ Fax No: _____

Christian R. Klassen

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 2624
 CONNECTION TEL 12126372750
 SUBADDRESS
 CONNECTION ID
 ST. TIME 05/14 12:45
 USAGE T 01'45
 PGS. SENT 11
 RESULT OK

BERGSTEIN & ULLRICH, LLP

- ATTORNEYS AT LAW -

15 RAILROAD AVENUE • CHESTER, NEW YORK 10918

TELEPHONE (845) 469-1277

FACSIMILE (845) 469-5904

E-MAIL thefirm@tbulaw.com

www.tbulaw.com

Stephen Bergstein
 Helen G. Ullrich

Of Counsel
 Chri topher D. Watkins

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Date: 5/14/07

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TRANSMITTED TO:

Name: James Cott, esq

Fax No: 212 637-2750

Name: _____

Fax No: _____

Name: _____

Fax No: _____

Name: _____

Fax No: _____

Name: _____

Fax No: _____

Transmitted By:

Exhibit 3



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
INSTALLATION MANAGEMENT COMMAND
HEADQUARTERS, UNITED STATES ARMY GARRISON, WEST POINT
681 HARDEE PLACE
WEST POINT, NY 10996-1514

May 14, 2007

Sussman & Watkins
40 Park Place
Post Office Box 1005
Goshen, New York 10924

Dear Mr. Sussman:

Your request on behalf of the Orange County Democratic Alliance (and affiliated groups) to stage a protest inside the gates of the West Point Military Reservation is denied.

The United States Military Academy (USMA) is not a public forum. Accordingly, West Point has never permitted protests or demonstrations of any type inside the gates of the installation. As a military installation, West Point exists to fulfill a specific military mission. Permitting protests or demonstrations inside the gates of the installation is inconsistent with the military mission and can detract from the good order, discipline, security, morale, or loyalty of the Soldiers who are assigned to or work at the installation.

Above and beyond West Point's policy prohibiting protests and demonstrations inside the gates of the installation, your request to stage a protest within the installation on the day of the graduation ceremony is further denied for the following reasons. As the Garrison Commander, it is my duty to ensure the security of the installation, which includes the responsibility for determining who may come onto the installation under any given circumstance. It is my daily mission to ensure the security and safety of the West Point Military Reservation, including the Cadets, Soldiers, Family members, and civilians who live and work here every day, as well as those who visit. It is my specific mission on May 26, 2007 to ensure that graduation events, including the arrival and departure of the graduation speaker and his party, as well as the family members and friends of graduating Cadets, are accomplished in an orderly manner. I have determined that there is no safe way for up to 1000 people to assemble in any area on the military reservation on May 26, 2007 to protest the appearance of the Vice President of the United States at the graduation ceremony that morning without compromising the safety of our residents, our graduation visitors, and the protestors themselves. Further, although I may, under the provisions of United States Military Academy Regulation 27-2, allow demonstrations on the West Point Military Reservation outside the gates of the installation, you have not made such a request.

United States Military Academy Regulation 27-2 reflects applicable Federal case law and regulation regarding the permissibility of persons to come on to the West Point Military Reservation for the purposes of conducting a protest or demonstration. As you know, such activities are prohibited in the absence of my specific authorization to do so, and coming on to


-2-

the installation for the purpose of conducting a protest or demonstration may subject you and your group members to prosecution under applicable Federal laws, as well as to various administrative sanctions, including but not limited to bar actions.

The USMA respects the rights and freedoms of Americans to peacefully and legally assemble to protest and bring their grievances to the government, and we teach our Cadets and Soldiers to fight every day for the right of all Americans to legally protest. Unfortunately, however, we cannot accommodate your request.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'BACF', with a long horizontal flourish extending to the right.

Brian A. Crawford
Colonel, US Army
Garrison Commander



FACSIMILE COVER SHEET

U.S. ATTORNEY'S OFFICE, SDNY
86 CHAMBERS STREET
NEW YORK, NY 10007

From: Mara E. Trager
Jeannette A. Vargas
Assistant United States Attorneys

Office Phone No.: (212) 637-2799, 2678

Fax Number: (212) 637-2702

No. pages
(including cover sheet): 3

Date sent: May 14, 2007

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TO: PHONE NO: FAX NO:

Stephen Bergstein, Esq. (845) 469-1277 (845) 469-5904